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PATRICIA CROWELL

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 WINE SCOUT INTERNATIONAL,) CASE NO. C 07 05930 JSW
12 Plaintiff,)
13 vs.) REPLY TO OPPOSITION TO
14 PATRICIA CROWELL,) DEFENDANT'S MOTION TO
) ENLARGE TIME FOR THE
) FOR THE FILING OF RESPONSIVE
) PLEADINGS
15 Defendant.) Date: Shortened Time
) Time: Set By the Court
16) Courtroom: 2, 17th Floor
17) Judge: Hon. Jeffrey S. White
18) [Electronic digital signatures permitted]
19)

In its Opposition, plaintiff attempts to obfuscate with a purported sixty-eight page chronology a central issue to the Motion before the Court – after the “quiet period” for the noticed publication by the PTO of defendant’s application to register the trademark, The Wine Scout, that will end in just after mid-March 2008, the Trademark Attorney has indicated that she will likely approve the deletion of International Class No. 35 from defendant’s trademark application. That action would irrefutably moot a number of the claims in the Complaint and ameliorate the concerns of plaintiff, but action thereon by the PTO cannot occur until after the close of the publication period of plaintiff’s trademark application which will be approximately

1 the end of March, 2008.¹

2 In its Opposition, plaintiff would have the Court believe that it, having filed an
 3 Opposition with the PTO to defendant's published trademark and then filed to have that
 4 Opposition stayed by its own motion pending the outcome of this litigation, the Trademark
 5 Attorney can take no further action following the publication period.

6 That statement by way of obfuscation is quite simply not in concert with either the
 7 statements of the Trademark Attorney or the Trademark Manual of Examination Procedures
 8 (hereinafter referred to as "TMEP"). Specifically, TMEP 1505.01(a) provides:

9 If an applicant proposes to amend the identification of goods or services
 10 after publication by restricting or deleting items in the existing
 11 identification, and the amendment is otherwise proper, the Office will
 12 approve the amendment, and the mark will not be republished.

13 If International Class No. 35 is deleted from defendant's approved and published
 14 trademark thereby mooting a number of the claims in the Complaint and ameliorating the
 15 concerns of plaintiff, then it is as likely as not that defendant's responsive pleadings may well be
 16 a Rule 12 Motion and not an Answer and/or Counterclaim. If defendant is precluded from
 17 awaiting this outcome by the PTO, which she is assured will occur prior to the end of March,
 18 2008, then there will be unquestioned substantial harm or prejudice to her and none to the
 19 plaintiff in light of a first Case Management Conference that will not occur until April 25, 2008.

20 That is the very real issue before the Court in the Motion, one that plaintiff cannot
 21 obfuscate, and thus plaintiff remains devoid of any showing to the Court of substantial harm or
 22 prejudice to it whatsoever if the Motion is granted.

23 DATED: February 27, 2007

24 Respectfully submitted,

25 BUSINESS & TECHNOLOGY LAW GROUP

26 By: /s/ Stephen N. Hollman
 27 Stephen N. Hollman,
 28 Attorneys for Defendant,
 PATRICIA CROWELL

1. Crowell Decl., p. 3, ll. 7-10 and ll. 16-22; Hollman Decl. p. 2, ll. 7-8; Complaint (ECF Document No. 1,
 e.g., ¶¶ 7, 9, 15.